IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION

BRIAN DOYLE, Plaintiff v. U-HAUL INTERNATIONAL, INC., U-HAUL COMPANY OF GEORGIA, JOHN BRICK and CLAUDIA CAMPBELL, Defendants.	CIVIL ACTION FILE NO. 1:15-CV-00118-AT-WEJ

ORDER

This matter is before the Court on Defendant U-Haul International, Inc's ("UHI") Motion for Sanctions Under Federal Rule of Civil Procedure 11 [262]. For the reasons explained below, said Motion is **DENIED**.[1]

[1] The Court has acted before the time allotted for plaintiff to respond because the instant Motion is procedurally barred. Doing so saves plaintiff the expenditure of unnecessary attorney's fees.

I. UHI's Motion

Plaintiff filed his Complaint [1-1] in the State Court of Fulton County, Georgia on December 10, 2014, alleging that he had been subjected to sexual harassment, retaliation, and general harassment based on his sex in violation of Title VII of the Civil Rights Act of 1964, 42 U.S.C. § 2000 et seq., and 42 U.S.C. § 1981. Plaintiff also alleged that the defendants breached an employment contract with him and committed various state law torts. Defendants removed the case to this Court on January 14, 2015 [1].[2]

According to UHI, plaintiff alleges that UHI knew of certain misconduct engaged in by defendants Claudia Campbell and John Brick and failed to take action to correct such misconduct. Plaintiff further claims that UHI employed him, and that Mr. Brick and Ms. Campbell reported to UHI. Accordingly,

[2] Where a case is removed from state court, Rule 11 does not apply to pleadings filed before removal, such as the Complaint here. See Worldwide Primates, Inc. v. McGreal, 26 F.3d 1089, 1091 (11th Cir. 1994). The rule, however, is applicable to papers filed in federal court after removal. Fed. R. Civ. P. 81(c). "Any subsequent federal court filings, such as those in opposition to a motion to dismiss, are sanctionable if they resulted in the continuation of a baseless lawsuit." McGreal, 26 F.3d at 1091. Plaintiff sought to amend the Complaint here through dropping certain claims [208] and will presumably file a response to UHI's Motion for Summary Judgment.

plaintiff claims that UHI is liable to him for sexual harassment and retaliation and breach of contract. (UHI's Mem. [262-1] 1-2.)

However, UHI contends that there is no record evidence to suggest that it was aware of any alleged discriminatory behavior; that UHI employed plaintiff, Mr. Brick, or Ms. Campbell; or that an employment agreement existed between plaintiff and UHI. In fact, UHI shows that, during his deposition, plaintiff admitted that his employer was U-Haul Co. of Georgia, not UHI. (See UHI's Mem. 2 (citing Doyle Dep. [262-2] 540:25-541:5).) Plaintiff further admitted that he had no written contract of employment with UHI. (Id. (citing Doyle Dep. 513:13-22).) Despite plaintiff's full knowledge that he was not employed by UHI, defendant asserts that he filed this action and continues to pursue his claims against UHI even after the discovery process made it abundantly clear that UHI did not employ him, Mr. Brick, or Ms Campbell and that UHI has no liability in this action. (Id. at 2-3.) UHI reports that plaintiff has further indicated that he intends to oppose UHI's pending Motion for Summary Judgment. (Id. at 3.)

UHI contends that this Court should impose Rule 11 sanctions against plaintiff and his counsel because the claims alleged in the Compliant are frivolous. (UHI's Mem. 4.) At the time he filed the Complaint, plaintiff had no evidentiary support, nor could he have reasonably believed, that UHI employed him. Further, plaintiff had no reasonable factual basis for his claims that UHI was liable for the acts of Mr. Brick or Ms. Campbell, or that it employed either of those defendants. Moreover, despite months of discovery and depositions, plaintiff and his attorneys have failed to discover any evidence establishing that UHI employed plaintiff, Mr. Brick, or Ms. Campbell, or that UHI was aware of any alleged discriminatory conduct. Yet, plaintiff and his attorneys have persisted in their claims and continue to file frivolous motions and responses to proper motions by UHI to injure and harass UHI. (Id. at 4-5.)

II. ANALYSIS

Federal Rule of Civil Procedure 11(c) states that a motion for sanctions "must not be filed or be presented to the court if the challenged paper, claim, defense, contention, or denial is withdrawn or appropriately corrected within 21 days after service." Fed. R. Civ. P. 11(c)(2). "Stated otherwise, Rule 11 'requires the moving party to serve the motion for sanctions on opposing counsel at least twenty-one days prior to filing it with the court.'" FDIC v. David Appraisals, Inc., No. 6:11-CV-220-ORL-19, 2012 WL 252835, at *3 (M.D. Fla. Jan. 26, 2012) (quoting In re Miller, 414 F. App'x 214, 216 (11th Cir. 2011) (per curiam)); see also Estate of Kyle Thomas Brennan v. Church of Scientology Flag Serv. Org., Inc., No. 8:09-CV-264-T-23EAJ, 2012 WL 12895730, at *1 (M.D. Fla. Jan. 25,

2012) ("Rule 11(c)(2), Federal Rules of Civil Procedure, requires a party to serve a motion for sanctions on the opposing party at least twenty-one days before submitting the motion to the court.").

This so-called "safe harbor" provision provides opposing counsel twenty-one days to correct the alleged Rule 11 violation without being subject to sanctions. Peer v. Lewis, 606 F.3d 1306, 1315 (11th Cir. 2010). "If corrective action is taken, the question of sanctions becomes moot." See 5A Wright & Miller, Federal Practice and Procedure 2nd § 1337.2 (2010). After the expiration of twenty-one days, if corrective action is not taken, the party seeking sanctions may file the motion, describing the specific conduct that allegedly violated Rule 11(b). See Fed. R. Civ. P. 11(c)(2).

UHI fails to show that it complied with Federal Rule of Civil Procedure 11(c)(2) before filing the instant Motion. In other words, there is no showing that, twenty-one days before filing the instant Motion, UHI served it on plaintiff. "'The plain language of the rule indicates that this notice and opportunity prior to filing is mandatory.'" Oliver v. Lib Props., Inc., No. 1:10-CV-0539-TWT-JFK, 2010 WL 2867932, at *8 (N.D. Ga. June 21, 2010) (quoting Elliott v. Tilton, 64 F.3d 213, 216 (5th Cir. 1995)), R. & R. adopted, No. 1:10-CV-539-TWT, 2010 WL 2867925 (N.D. Ga. July 20, 2010).

Because UHI has failed to plead that it complied with the procedural safe harbor of Rule 11, which requires that a motion for sanctions be served but not filed with the Court unless the challenged paper or claim is not withdrawn or corrected within twenty-one days after service, UHI's Motion for Sanctions must be denied. See Macort v. Prem, Inc., 208 F. App'x 781, 786 (11th Cir. 2006) (per curiam) ("Budget's failure to give Macort the twenty-one day safe harbor period forecloses Rule 11 sanctions for the initial filing of a frivolous suit."); Porter v. Duval Cty. Sch. Bd., No. 3:09-CV-285-J-32MCR, 2010 WL 1252177, at *8 (M.D. Fla. Mar. 26, 2010) (motion for sanctions denied for plaintiff's failure to comply with procedural safe harbor requirement of Rule 11(c)(2)), aff'd, 406 F. App'x 460 (11th Cir. 2010) (per curiam).

III. CONCLUSION

For the reasons explained above, Defendant U-Haul International, Inc's Motion for Sanctions Under Federal Rule of Civil Procedure 11 [262] is **DENIED** for failure to comply with the requirements of Federal Rule of Civil Procedure 11(c)(2).

This denial is **WITHOUT PREJUDICE** to UHI's right to re-file this Motion for Sanctions after complying with the aforementioned safe-harbor requirement of Rule 11(c)(2). Given the evidence that UHI has submitted with its

Motion, unless plaintiff has probative evidence showing either that Mr. Doyle, Mr. Brick, and/or Ms. Campbell worked for UHI or that there is a basis to hold UHI liable for the actions of what appears to be an independent corporate subsidiary (U-Haul Co. of Georgia), plaintiff should seek to dismiss UHI and avoid potential Rule 11 sanctions. See Fed. R. Civ. P. 41(a)(1)(A)(ii), (a)(2). Plaintiff is also cautioned that, if the Court deems his Title VII claims against UHI to be frivolous, unreasonable or without foundation, then UHI's attorney's fees may be imposed against him. See Christiansburg Garmet Co. v. EEOC, 434 U.S. 412, 420-21 (1978).

SO ORDERED, this 10th day of March, 2017.

Walter E. Johnson

WALTER E. JOHNSON
UNITED STATES MAGISTRATE JUDGE